

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CIVIL ACTION NO: 3:20-CV-00172**

DAVID RUSSELL,

PLAINTIFF,

v.

**UNIVERSITY OF NORTH
CAROLINA AT CHARLOTTE,**

DEFENDANT.

**DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT**

**Fed. R. Civ. P. 56
Local Civil Rule 7.1**

NOW COMES Defendant The University of North Carolina at Charlotte (“Defendant,” or “University”), by and through undersigned counsel, and hereby moves the Court, pursuant to Fed. R. Civ. P. 56, to enter an order granting summary judgment on the Amended Complaint¹ in Defendant’s favor. The University moves for summary judgment on the grounds that: (1) Plaintiff David Russell (“Plaintiff”) cannot establish a *prima facie* case for his retaliation claim under Title VII of the Civil Rights Act of 1964 (“Title VII”); and (2) even if Plaintiff established a *prima facie* case for retaliation, UNCC had legitimate, non-retaliatory reasons for Plaintiff’s poor performance rating, development plan, and written reprimand following his 2019 Spring Tenured Faculty Performance Review (“TFPR”), and the Distinguished Professor job requirements.

¹ Russell pled factual allegations of retaliatory behavior toward other non-party faculty members. (D.E. 11 at 3). Pursuant to the Order filed on October 22, 2020, this Court held that since Russell has stated “he is not asserting claims on behalf of other faculty members” any such claims and/or allegations related to non-party faculty members is moot, and will not be addressed by this Court. (D.E. 11 at 3, D.E. 11 at 3, fn 2).

Additionally, the Record rebuts Plaintiff's claim that \$50,000 was removed from the part-time faculty budget, and Plaintiff admits he has no documentary evidence to support this claim. The Record also demonstrates that Plaintiff has not sustained *any* loss in salary, title, or employee benefits.

In support of this motion, the University relies upon the pleadings on file in this case; exhibits; depositions; Declarations of Dr. Jay Grymes, Provost Joan Lorden, Dr. Lee Gray, Dr. Fred Spano, Mary Welsh, Elizabeth Farley, Michael Coston, and Hannah Harrell; and its memorandum of law filed contemporaneously. For ease of reference, the declarations, exhibits, and copies of cited excerpts of deposition transcripts are attached to this Motion.

The overwhelming evidence in the Record and the legal authority demonstrate that Plaintiff's Title VII retaliation claim is wholly without merit, and that the University is entitled to summary judgment as a matter of law. If this Court requires a hearing on this motion, Defendant respectfully requests that a virtual hearing be held, if available. (Standing Order Misc. No. 3:07-MC-47, Docket Entry 16).

WHEREFORE, the University respectfully requests that the Court:

1. Grant Defendant's Motion for Summary Judgment;
2. Enter judgment for the University in this action on all of Plaintiff's claims; and
3. Grant the University such other relief as may be appropriate.

Respectfully submitted this 16th day of July, 2021.

JOSHUA H. STEIN
Attorney General

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing **DEFENDANT'S MOTION FOR SUMMARY JUDGMENT** with the Clerk of Court using the CM/ECF system, which will send notification of such filing to all registered CM/ECF users, including Plaintiff's counsel Kirk J. Angel, at kirk@mailalf.com.

Respectfully submitted this 16th day of July, 2021.

JOSHUA H. STEIN
Attorney General

/s/Vanessa N. Totten
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